

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, ATTORNEY GENERAL,

Plaintiff,

v.

Civil Action No. 15-C-1833
Judge Charles E. King

VOLKSWAGEN GROUP OF AMERICA, INC.,
d/b/a or a/k/a Volkswagen of America, Inc.,
a New Jersey Corporation,
VOLKSWAGEN AKTIENGESELLSCHAFT,
d/b/a or a/k/a VOLKSWAGEN AG and/or
d/b/a or a/k/a VOLKSWAGEN GROUP, a German corporation,
AUDI OF AMERICA, LLC, a Delaware limited liability company,
AUDI AKTIENGESELLSCHAFT,
d/b/a or a/k/a AUDI AG,
a German corporation,
PORSCHE CARS NORTH AMERICA, INC.,
a Delaware corporation,
DR. ING. H.C.F. PORSCHE AG
d/b/a PORSCHE AG, a German corporation,
ROBERT BOSCH GMBH, a German company, and
ROBERT BOSCH, LLC, a Delaware limited liability company,

Defendants.

AMENDED COMPLAINT

Plaintiff, the State of West Virginia ex rel. Patrick Morrissey, Attorney General ("the State" or "Attorney General"), files this Amended Complaint asking the Court to permanently enjoin the above-named Defendants, Volkswagen Group of America, Inc. ("Volkswagen America"), Volkswagen Aktiengesellschaft ("Volkswagen AG"), Audi of America, LLC ("Audi America"), Audi Aktiengesellschaft ("Audi AG"), Porsche Cars North

America, Inc. (“Porsche America”), Dr. Ing. h.c.F. Porsche AG (“Porsche AG”), Robert Bosch GmbH (“Bosch GmbH”) and Robert Bosch, LLC (“Bosch America”) from violating the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 *et seq.*, and other applicable consumer protection laws and regulations, and to enter a final order awarding the State all other appropriate relief as authorized by W. Va. Code § 46A-7-108.

I. PARTIES

1. The State, by and through the Attorney General, Patrick Morrissey, is authorized to bring this action pursuant to the Consumer Credit and Protection Act, W. Va. Code § 46A-1-101, *et seq.* (the “WVCCPA”).

2. The Defendant, Volkswagen Group of America, Inc., d/b/a or a/k/a Volkswagen of America, Inc., is a corporation organized under the laws of the State of New Jersey, with its principal place of business located at 2200 Ferdinand Porsche Drive, Herndon, Virginia.

3. Volkswagen America is a wholly-owned subsidiary of the Defendant, Volkswagen AG.

4. Volkswagen America is authorized to do business in West Virginia, and at all times relevant to this action was authorized to do business and did business in West Virginia, including the representation, advertising, promotion, marketing, offering for sale, selling and leasing of Volkswagen automobiles, and is subject to the jurisdiction of this Court.

5. Volkswagen America at all times relevant to this action had a dealership, engaged in the representation, advertising, promotion, marketing, offering for sale or lease, sale, and lease of automobiles in West Virginia. Volkswagen America currently has five (5) dealerships in West Virginia engaged in the advertising, promotion, marketing, offering for sale or lease, sale, and lease of automobiles.

6. Volkswagen Aktiengesellschaft, doing business as or also known as Volkswagen AG and/or doing business as or also known as Volkswagen Group (“Volkswagen AG,” together with Volkswagen America, “Volkswagen”), is a foreign corporation organized under the laws of the Republic of Germany, with its principal place of business in Wolfsburg, Germany.

7. Volkswagen AG is the parent corporation of Audi AG, Volkswagen Group of America, Inc. and Dr. Ing. h.c. F. Porsche AG.

8. Volkswagen AG, in person or through its agent, does business in West Virginia, and at all times relevant to this action did business in West Virginia, including the representation, advertising, promotion, marketing, designing, development, manufacturing, offering for sale or lease, sale, and lease of Volkswagen automobiles, and Volkswagen AG engages in a persistent course of conduct in West Virginia.

9. Volkswagen AG derives revenues from its products and goods sold, used, or consumed in West Virginia, or from its services rendered in West Virginia.

10. Volkswagen AG is subject to the jurisdiction of this Court pursuant to West Virginia Long-Arm statutes, W. Va. Code § 56-3-33, and W. Va. Code § 31D-15-1501.

11. Volkswagen AG engineered, designed, developed, manufactured, and installed hardware and/or computer software intended to selectively allow unlawful amounts of exhaust pollution (“defeat devices”) on certain vehicles equipped with a 2.0-liter TDI diesel engine and on certain vehicles equipped with a 3.0-liter TDI diesel engine, exported those certain vehicles with the knowledge and understanding that they would be sold throughout the United States and in West Virginia.

12. The Defendant, Audi of America, LLC (“Audi America”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, Virginia 20171.

13. Audi America is a wholly-owned subsidiary of the Defendant, Audi AG, and is an operating unit of the Defendant, Volkswagen Group of America, Inc.

14. Audi America is authorized to do business and does business in West Virginia, and at all times relevant to this action was authorized to do business and did business in West Virginia, including the representation, advertising, promotion, marketing, offering for sale or lease, sale, and lease of Audi automobiles, and Audi America is subject to the jurisdiction of this Court.

15. Audi America at all times relevant to this action had a dealership, engaged in the representation, advertising, promotion, marketing, offering for sale, sale, and lease of automobiles in West Virginia. Audi America currently has two (2) dealerships in West Virginia engaged in the advertising, promotion, marketing, offering for sale, sale and lease of automobiles.

16. The Defendant, Audi Aktiengesellschaft, doing business as or also known as Audi AG (“Audi AG”), is a corporation organized under the laws of the Republic of Germany, with its principal place of business in Ingolstadt, Germany.

17. Audi AG is the parent corporation the Defendant, Audi of America, LLC, and is a subsidiary of the Audi Group, which is a wholly-owned subsidiary of the Defendant, Volkswagen AG. Volkswagen AG owns 99.55% of the stock of Audi AG.

18. Audi AG, in person or through its agent, does business in West Virginia, and at all times relevant to this action did business in West Virginia, including the representation,

advertising, promotion, marketing, designing, development, manufacturing, offering for sale, sale, and lease of Audi automobiles, and Audi AG engages in a persistent course of conduct in West Virginia.

19. Audi AG derives revenues from its products and goods sold, used, or consumed in West Virginia, or from its services rendered in West Virginia.

20. Audi AG is subject to the jurisdiction of this Court pursuant to the West Virginia Long-Arm statutes, W. Va. Code § 56-3-33, and W. Va. Code § 31D-15-1501.

21. Audi AG engineered, designed, developed, manufactured, and installed defeat devices on certain vehicles of certain makes and models and model years equipped with a 2.0-liter TDI diesel engine, and on certain vehicles of certain makes and models and model years equipped with a 3.0-liter TDI diesel engine, and exported those certain vehicles with the knowledge and understanding that they would be sold throughout the United States and in West Virginia.

22. The Defendant, Porsche Cars North America, Inc., (“Porsche America”), is a corporation organized under the laws of the State of Delaware, with its principal place of business at One Porsche Drive, Atlanta, Georgia 30354.

23. Porsche America is a wholly-owned subsidiary of the Defendant, Porsche AG.

24. Porsche America is the exclusive importer of Porsche automobiles for the United States.

25. Porsche America was and is authorized to do business in West Virginia, and at times relevant to this action was authorized to do business and did business in West Virginia, including the representation, advertising, promotion, marketing, offering for sale or lease, sale, and lease of Porsche automobiles, and is subject to the jurisdiction of this Court.

26. Porsche America currently has no dealership in West Virginia, but did have a dealership recently, and at times relevant to this complaint, engaged in the representation, advertising, promotion, marketing, offering for sale, sale and lease of automobiles in West Virginia.

27. The Defendant, Dr. Ing. h.c. F. Porsche, doing business as or also known as Porsche AG (“Porsche AG”), is a corporation organized under the laws of the Republic of Germany, with its principal place of business in Stuttgart, Germany.

28. Porsche AG is the parent company of the Defendant, Porsche America. Porsche AG is a wholly-owned subsidiary of the Defendant, Volkswagen AG.

29. Porsche AG, in person or through its agent, does business in West Virginia, and at times relevant to this action did business in West Virginia, including the representation, advertising, promotion, marketing, designing, development, manufacturing, offering for sale or lease, sale, and lease of Porsche automobiles, and Porsche AG engages in a persistent course of conduct in West Virginia.

30. Porsche AG derives revenues from its products and goods sold, used, or consumed in West Virginia, or from its services rendered in West Virginia.

31. Porsche AG is subject to the jurisdiction of this Court pursuant to the West Virginia Long-Arm statutes, W. Va. Code § 56-3-33 and W. Va. Code § 31D-15-1501.

32. Porsche AG engineered, designed, developed, manufactured, and installed the defeat devices on certain vehicles of certain makes and models and model years equipped with a 3.0-liter TDI diesel engine and exported those certain vehicles with the knowledge and understanding that they would be sold throughout the United States, including West Virginia.¹

¹ The motor vehicles designed, developed, manufactured, marketed and sold by any of the Defendants containing a defeat device are collectively referred to as the “Affected Vehicles.”

33. The acts the State alleges the Volkswagen Defendants' committed in West Virginia were authorized, ordered to be committed, and/or ratified by the Volkswagen Defendants' officers, agents, employees, or representatives while engaged in the management, direction, control, or transaction of the Volkswagen Defendants' business affairs.

34. Robert Bosch GmbH ("Bosch GmbH") is a German multinational engineering and electronics company headquartered in Gerlingen, Germany.

35. Bosch GmbH is the parent company of Robert Bosch LLC.

36. Bosch GmbH, directly and/or through its North-American subsidiary Robert Bosch LLC, at all material times, designed, manufactured, and supplied elements of the defeat device to Volkswagen for use in the Affected Vehicles.

37. Robert Bosch LLC ("Bosch America") is a Delaware limited liability company with its principal place of business located at 38000 Hills Tech Drive, Farmington Hills, Michigan 48331.

38. Bosch America is a wholly-owned subsidiary of Bosch GmbH.

39. Bosch America, directly and/or in conjunction with its parent Bosch GmbH, at all material times, designed, manufactured, and supplied elements of the defeat device to Volkswagen Defendants for use in the Affected Vehicles. Bosch GmbH and Bosch America are collectively referred to as "Bosch" or "Bosch Defendants."

40. Volkswagen America, Volkswagen AG, Audi AG, Audi America, Porsche America and Porsche AG are collectively referred to as "Volkswagen" or Volkswagen Defendants."

II. JURISDICTION AND VENUE

41. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution. W. Va. Code § 51-2-2, and W. Va. Code § 53-5-3.

42. Venue is proper in this court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(a)(6).

III. BACKGROUND AND APPLICABLE LAW

43. Defendant Volkswagen America is a wholly owned subsidiary of Volkswagen AG, and is responsible for the U.S. operations of Volkswagen AG's brands Volkswagen, Audi, Bentley, Bugatti, Lamborghini, Porsche and VW Credit, Inc.

44. Volkswagen Defendants are in the business of distributing, selling, and financing motor vehicles within the State of West Virginia.

45. The United States Government, through the Environmental Protection Agency ("EPA"), has passed and enforced laws designed to protect United States citizens from pollution and other significant risks to human health and the environment. Automobile manufacturers must abide by these U.S. laws and must adhere to EPA rules and regulations.

46. The Clean Air Act ("CAA") is a comprehensive federal law that regulates different types of air emissions.

47. The CAA was passed to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1)-(2).

48. The CAA requires, among other things, that each vehicle sold in the United States be covered by an EPA issued certificate of conformity ("COC"), which certifies that the vehicles meet applicable emissions standards for air pollution.

49. In 2008, Volkswagen introduced a new line of “clean diesel” vehicles with Turbo-charged Direct Injection (“TDI”) engines.

50. Volkswagen advertised the TDI clean diesel vehicles as being environmentally friendly, claiming them to be the “most clean diesel vehicles in the U.S.”

51. Beginning in 2008 and continuing until September 2015, in order to entice consumers to purchase their TDI clean diesel vehicles, Volkswagen aggressively advertised the TDI line of vehicles as environmentally friendly, fuel efficient, and high performance. In fact, Volkswagen marketed the TDI clean diesel vehicles as the “most clean diesel vehicles in the U.S.,” and advertised that the engines were EPA certified in all 50 states.

52. Volkswagen created the “Think Blue” campaign after the 2009 Jetta TDI received the Green Car of the Year award. The “Think Blue” campaign web site states that the campaign “embodies Volkswagen’s goal of creating environmentally friendly products and solutions, encouraging more eco-conscious behavior and contributing to a sustainable future. It’s about being responsible on the road and more environmentally conscious – not just in our cars, but everywhere, every day.”

53. Volkswagen also produced a series of TV advertisements for the U.S. market, intended to debunk myths about diesel engines. One ad, titled “Three Old Wives Talk Dirty,” featured three elderly women debating whether diesels, though “beautiful,” are dirty vehicles. To ostensibly debunk the “Old Wives’ Tale” that diesel produced dirty exhaust and hazardous emissions, one of the women held her white scarf to the exhaust to convince the passengers that the exhaust was environmentally friendly, and not, in fact, dirty. She removed the scarf, gestured at it, and asked her friends “see how clean it is?”

54. Like others in Volkswagen's "clean" diesel campaign, this ad falsely or misleadingly portrayed the exhaust emissions from the Affected Vehicles as clean and safe. In reality, the Affected Vehicles actually emitted invisible and hazardous levels of nitrogen oxide pollution ("NOx").

55. These themes extended to print brochures at dealerships and to Volkswagen's website.

56. The brochures emphasized that Volkswagen's "clean" diesel was "clean," "green," and low emission. For example, a "2012 Volkswagen Family" brochure for all Volkswagen models, states:

Let TDI "clean" diesel set you free from the filling station. Our TDI engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank without sacrificing one bit of turbocharged performance. That's all thanks to the TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines. On most models, you can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level.

57. Similarly, a "2013 Volkswagen Family" brochure, applicable to all models, states:

When you've had your fill of filling stations, hit the road in your TDI "clean" diesel Volkswagen. These engines achieve astonishing mileage and range—up to 43 highway mpg and 795 miles on a single tank without sacrificing one bit of turbocharged performance. That's all thanks to the TDI technology that uses a direct injection system, and runs on ultra-low-sulfur diesel, helping reduce emissions by up to 90% compared to previous diesels. Far and away, it's our best diesel yet.

58. And a 2012 “Volkswagen TDI “clean” diesel” brochure for the six models of Volkswagen TDIs then on the market (Jetta, Jetta SportWagen, Golf, Passat, Beetle, and Touareg) states:

These are not the kind of diesel engines that you find spewing sooty exhaust like an old 18-wheeler. Clean diesel vehicles meet the strictest EPA standards in the U.S. Plus, TDI technology helps reduce sooty emissions by up to 90%, giving you a fuel-efficient and eco-conscious vehicle. . . . Think beyond green. TDI represents one part of the Volkswagen Think Blue initiative, our goal of creating and encouraging eco-conscious products and behaviors. Join us in being more responsible on the road and on the planet.

59. Further, a 2010 TDI diesel Jetta and Jetta SportWagen brochure states:

The 2.0L TDI® “clean” diesel engine gives you 140hp and 236 lbs-ft of torque. This engine is the toast of Europe for its quickness, low emissions, and fuel efficiency—a staggering 38 city/44 highway mpg (automatic) based on real-world AMCI-certified testing (30 city/42 highway mpg. EPA estimates).

...

Jetta TDI “clean” diesel offers fuel efficiency, power, performance, and a \$1,300 tax credit from Uncle Sam because it qualifies as an Advanced Lean Burn Credit. Or, in other words, lean, mean, cleaner burning machines. Volkswagen believes in delivering a no-compromise German-tuned auto that performs, and still leaves a small carbon footprint. The Volkswagen TDI engine is cleaner than conventional diesels, emitting as much as 95% less soot than previous diesel engines, as well as a reduction in oxides of nitrogen and sulfur. It’s powerful, with the kind of low-end torque that racers and tuners demand. It’s efficient, using a turbocharger and smart exhaust design to burn fuel more effectively. So much so, in fact, that Volkswagen was the first automaker to make clean diesel cars certified in all 50 states. And best of all, it will help save you money with an out-of-this-world AMCI-estimated mileage of 38 city/44 highway mpg (automatic) and over 594 miles on a single tank of fuel. There’s even a Jetta SportWagen TDI “clean” diesel, with the same astonishing clean diesel technology, plus a whopping 66.9 cubic feet of cargo room.

60. A Volkswagen 2011 Golf TDI brochure states:

Regardless of which Golf model you get, you'll be seeing a lot fewer gas stations and a lot more road. The 2.5L Golf comes standard with a 170-hp, in-line five-cylinder engine with 177 lbs/ft torque and impressive fuel efficiency rated at 23 city/30 highway mpg. Opt for the Golf TDI model and you'll enjoy a turbocharged clean diesel engine with 140 hp and 236 lbs/ft of torque that will run you even farther at a whopping 30 city/42 highway mpg. That's up to 609 miles per tank. And you'll do it all with 95 percent fewer sooty emissions than diesel engines of old, making it cleaner for both you and the planet. So whether you're in the market for IntelliChoice's 2010 "Best Overall Value Compact Car over \$17,000," or you want to go for a variation on that theme and get the ever-popular TDI model, you can't go wrong. In fact, you can go very right for a long, long time."

61. A Volkswagen 2012 Passat TDI brochure states:

Let the Passat TDI "clean" diesel set you free from the filling station. It achieves an astonishing 43 highway mpg and travels 795 miles on a single tank without sacrificing one bit of turbocharged performance. That's all thanks to its TDI technology that uses a direct injection system and runs on ultra-low-sulfur diesel, helping reduce sooty emissions by up to 90% compared to previous diesel engines. You can even choose the available DSG automatic transmission with Tiptronic to take that turbo engine to a whole new level.

...

The TDI "clean" diesel engine was designed and engineered around one simple belief: driving is more fun than refueling. So besides the reduced emissions and torque-filled benefits you experience behind the wheel of the Passat TDI, it also saves you money at the pump.

62. A Volkswagen 2013 Beetle TDI brochure states:

Start the TDI® "clean" diesel model and hear the surprisingly quiet purr of the first clean diesel Beetle, designed for both power and efficiency.

63. A Volkswagen 2014 Beetle TDI brochure states:

2.0L TDI “clean” diesel engine. Engineered with the idea that less is more. The Beetle TDI has lower CO₂ emissions compared to 84% of other vehicles. So every getaway you make will be a cleaner one.

64. A Volkswagen 2014 TDI Touareg brochure states:

3.0L TDI “clean” diesel engine. Engineered with the idea that less is more. The Touareg TDI has lower CO₂ emissions compared to 88% of other vehicles. So every getaway you make will be a clean one.

65. In May of 2014, the Center for Alternative Fuels, Engines & Emissions (“CAFEE”) at West Virginia University released a study on the in-use emissions of light duty diesel vehicles in the United States. The study conducted by CAFEE produced evidence that Volkswagen was cheating U.S. emissions testing on at least two Volkswagen TDI clean diesel vehicles. CAFEE’s results were later corroborated by the California Air Resources Board (“CARB”) and the EPA.

66. The CAFEE test results showed that when operated on the road, the two Volkswagen diesel vehicles emitted from 10 to 40 times the allowable amount of nitrogen oxide pollution.

67. The results of this study prompted an immediate investigation by the EPA which demanded an explanation from Volkswagen. Despite knowing that the Affected Vehicles contained illegal emission systems — and defeat devices intentionally designed to allow the vehicles to comply with emission standards on a test bench but not under normal driving operation — Volkswagen denied the allegations and blamed faulty testing procedures.

68. In December 2014, Volkswagen issued a recall purportedly to update emission control software in the Affected Vehicles. Follow-up testing of the Affected Vehicles in the laboratory and during normal road operation showed little change in the emissions. None of the technical issues suggested by Volkswagen adequately explained the NOx test results.

69. Dissatisfied with Volkswagen's explanations, federal and state officials finally threatened to withhold the COCs for Volkswagen's 2016 diesel vehicles until it adequately explained the higher NOx emissions. Volkswagen finally admitted it had installed defeat devices in the 2.0 TDI Affected Vehicles.

70. On September 18, 2015, based at least in part upon a study performed at West Virginia University, the EPA issued a Notice of Violation ("September NOV") to Volkswagen AG, Audi AG, and Volkswagen America, for failure to comply with the Clean Air Act regulations in 482,000 2.0 liter diesel engine vehicles sold in the United States since 2008 ("2.0 TDI").

71. As suggested by the CAFEE study, and as outlined in the EPA September NOV, Volkswagen purposely engineered certain Volkswagen and Audi diesel vehicles to cheat U.S. emissions tests by equipping them with software that detects when the vehicles are undergoing emissions testing. The software used by Volkswagen was designed in part by Defendant Bosch and allows emissions controls to operate normally when a vehicle is undergoing emissions testing, but suppresses emissions controls to increase performance and fuel economy when vehicles are operating normally. By suppressing the emissions controls during normal operation, the software allows 2.0 TDI diesel vehicles to emit up to 40 times the allowable levels of certain pollutants, including nitrogen oxides.

72. The CAA defines this type of software as a "defeat device."

73. The CAA expressly prohibits the use of defeat devices. A defeat device is any auxiliary emission control device “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use.” 40 C.F.R. § 86.1803-01; 40 C.F.R. § 86.1809-10 (“No new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat device.”).

74. It is a violation of the CAA to manufacture, sell, or install a defeat device in order to bypass or render inoperative any emissions control device.

75. Vehicles equipped with defeat devices will not be issued a certificate of conformity by the EPA, and cannot, therefore, be sold in the United States.

76. According to the EPA September NOV, Volkswagen installed its “defeat device” in at least the following 2.0 TDI diesel models: 2009-2015 VW Jetta; 2009-2014 Jetta Sportwagen; 2012-2015 VW Beetle; 2012-2015 Beetle Convertible; 2010-2015 VW Golf; 2015 Golf Sportwagen; 2012-2015 VW Passat; and 2010-2015 Audi A3. Discovery may reveal that additional vehicle models and model years are properly included as Affected Vehicles.

77. In a partial settlement reached with the United States of America, on behalf of the EPA in June 2016, the Volkswagen Defendants (except Audi America) admitted that

... software in the 2.0 Liter Subject Vehicles enables the vehicles ECMs [engine control module] to detect when the vehicles are being driven on the road, rather than undergoing Federal Test Procedures, and that this software renders certain emission control systems in the vehicles inoperative when the ECM detects the vehicles are not undergoing Federal Test Procedures, resulting in emissions that exceed EPA-compliant and CARB-compliant levels when the vehicles are driven on the road;

78. Volkswagen Defendants (except Audi America) further admitted in the partial settlement with the EPA that

... this software was not disclosed in the Certificate of Conformity and Executive Order applications for the 2.0 Liter Subject Vehicles, and, as a result, the design specifications of the 2.0 Liter Subject Vehicles, as manufactured, differ materially from the design specifications described in the Certificate of Conformity and Executive Order applications;

79. Volkswagen Defendants (except Audi America) repeated their admissions to the federal government to several states in a separate partial settlement agreement with the several states in June 2016.

80. In spite of publicly admitting that it had installed defeat devices in its 2.0 TDI Affected Vehicles, Volkswagen continued to sell 3.0 TDI Affected Vehicles, even after Volkswagen ordered its U.S. dealers to stop selling the 2.0 TDI Affected Vehicles in the Fall of 2015.

81. The EPA continued to investigate Volkswagen's conduct with regard to other TDI diesel vehicles after it issued the September NOV.

82. On November 2, 2015, the EPA issued a second Notice of Violation ("November NOV") to Volkswagen America, Volkswagen AG, Audi AG, Porsche AG, and Porsche America, alleging the companies had cheated on emissions testing for 2014-2016 3.0 TDI diesel vehicles. The 3.0 TDI diesel vehicles emit pollution at up to 9 times the allowable EPA standard.

83. A few weeks after the November NOV was issued, Volkswagen admitted to the EPA that it had installed the defeat device on 3.0 TDI diesel vehicles including model years 2009 through 2016.

84. According to the November NOV and Volkswagen's admission, Volkswagen installed its defeat device in at least the following 3.0 TDI diesel models: 2009-2016 Volkswagen Touareg; 2013-2016 Porsche Cayenne; 2014-2016 Audi A6 Quattro; 2014-2016; Audi A7 Quattro; 2014-2016 Audi A8; 2014-2016 Audi A8L; 2014-2016 Audi Q5; and 2009-2016 Audi Q7. Discovery may reveal that additional vehicle models and model years are properly included as Affected Vehicles.

85. Volkswagen had help with implementing the defeat device used in the Affected Vehicles.

86. Modern engines are integrated with sophisticated computer components to manage the vehicle's operation, such as an electronic diesel control ("EDC"). Bosch tested, manufactured and sold the EDC system used by Volkswagen in the Affected Vehicles. This system is more formally referred to as the Electronic Diesel Control Unit 17 ("EDC Unit 17"). Upon its introduction, EDC Unit 17 was publicly-touted by Bosch as follows:

. . . EDC17 . . . controls every parameter that is important for effective, low-emission combustion.

Because the computing power and functional scope of the new EDC17 can be adapted to match particular requirements, it can be used very flexibly in any vehicle segment on all the world's markets. In addition to controlling the precise timing and quantity of injection, exhaust gas recirculation, and manifold pressure regulation, it also offers a large number of options such as the control of particulate filters or systems for reducing nitrogen oxides. The Bosch EDC17 determines the injection parameters for each cylinder, making specific adaptations if necessary. This improves the precision of injection throughout the vehicle's entire service life. The system therefore makes an important contribution to observing future exhaust gas emission limits.

87. EDC Unit 17 was widely used throughout the automotive industry, including by BMW and Mercedes, to operate modern clean diesel engines. Bosch worked with each

vehicle manufacturer that utilized EDC Unit 17 to create a unique set of specifications and software code to manage the vehicle's engine operation.

88. With respect to the Affected Vehicles, however, EDC Unit 17 was also used to enable Bosch and Volkswagen to sell vehicles that passed emissions' tests but then emitted unlawful amounts of pollution when operated on the road. Bosch and Volkswagen worked together to develop and implement a specific set of software algorithms for implementation in the Affected Vehicles, which enabled Volkswagen to adjust fuel levels, exhaust gas recirculation, air pressure levels, and urea injection rates (for applicable vehicles).

89. When carmakers test their vehicles against EPA emission standards, they place their cars on dynamometers (large rollers in a lab) and then perform a series of specific maneuvers prescribed by federal regulations. Bosch's EDC Unit 17 gave Volkswagen the power to detect test scenarios by monitoring vehicle speed, acceleration, engine operation, air pressure and even the position of the steering wheel.

90. When the EDC Unit 17's detection algorithm detected that the vehicle was on a dynamometer (and undergoing an emission test), additional software code within the EDC Unit 17 downgraded the engine's power and performance and upgraded the emissions control systems' performance by switching to a "dyno calibration" to cause a subsequent reduction in emissions to legal levels. Once the EDC Unit 17 detected that the emission test was complete, the EDC Unit would then enable a different "road calibration" that caused the engine to return to full power while reducing the emissions control systems' performance, and consequently, caused the car to emit unlawful amounts of NOx emissions when normally operated on the road.

91. The CAA prohibits the sale of components used as defeat devices, “where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” 42 U.S.C. § 7522(a)(3).

92. In order to obtain a COC, automakers must submit an application, which lists all auxiliary emission control devices installed in the vehicle, a justification for each, and an explanation of why the control device is not a defeat device.

93. In order to obtain the COCs necessary to sell its vehicles, Volkswagen did not disclose, but rather concealed, the presence of the test-detecting and performance altering software code within the EDC Unit 17 from government regulators, thus making that software an illegal “defeat device.”

94. Volkswagen now admits that it obtained necessary COCs by not disclosing software used in the Affected Vehicles’ ECMs which software allowed the Affected Vehicles to emit pollution at levels higher than allowed by federal and state laws.

95. Because the COCs were obtained by deceptive conduct, and because the Affected Vehicles did not conform “in all material respects” to the specifications provided in the COC applications, the Affected Vehicles were never covered by a valid COC, and thus, were never legal for sale, nor were they EPA compliant, as represented. Volkswagen hid these facts from the EPA, other regulators, and consumers, and it continued to sell and lease the Affected Vehicles to the driving public, despite their illegality, and with the complicity of Bosch.

96. Volkswagen’s use of the defeat devices was enabled by its close partnership with Bosch, which enjoyed a sizable portion of its annual revenue from manufacturing parts and software used in Volkswagen’s diesel vehicles.

97. Bosch knew Volkswagen was using its emissions control components as a defeat device and, in fact, worked with Volkswagen to develop the software algorithm specifically tailored for the Affected Vehicles.

98. Although Bosch reportedly “advised” Volkswagen as early as 2007 that the components should only be used for internal testing, not for manipulation of the engine in emission testing, it knew or should have known that its “advice” would be ignored, and that the components would be used as defeat devices. Bosch supplied Volkswagen with approximately 11 million such emission control components over seven years.

99. Bosch continued to sell EDC Unit 17 to the Volkswagen Defendants in spite of the following:

a. Bosch manufactured, tested and sold EDC Unit 17 emissions control systems to various other diesel vehicle manufacturers that did not incorporate a defeat device in the software that allowed vehicles to automatically activate or disable the emissions control systems depending on operating conditions. Bosch could not plausibly believe that the “defeat device” on the Affected Vehicles was necessary for any legitimate purpose;

b. None of the varied emissions control systems that Bosch tested, manufactured and sold to other diesel vehicle manufacturers relied on the same NOx trap technology that Volkswagen was utilizing. Indeed, Volkswagen’s competitors, including reputable and technologically-sophisticated brands like Mercedes-Benz and BMW, continued using the more expensive urea-based technology; and

c. Absent extraordinary engineering breakthroughs, the EDC Unit 17 presented a practical impossibility of allowing the Affected Vehicles to both pass emissions testing and provide the on road performance advertised without cheating.

100. Bosch knew or recklessly disregarded that Volkswagen had not actually engineered a revolutionary alternative to the urea-based systems that enabled the Affected Vehicles to maintain their performance and fuel efficiency, while reducing emissions costs.

101. Instead, Bosch knew or recklessly disregarded that the Affected Vehicles utilized Bosch's component parts and software as defeat devices in order to evade federal and state vehicle emissions standards.

102. Bosch participated in the misleading, unlawful scheme by manufacturing, installing, testing, modifying, and supplying the EDC Unit 17 to include a "defeat device" in the Affected Vehicles. Additionally, Bosch continuously cooperated with the Volkswagen Defendants to ensure EDC Unit 17 was fully integrated into the Affected Vehicles. Finally, Bosch concealed the truth about the Affected Vehicles and collected the revenues and profits from its sales of the EDC Unit 17 to Volkswagen.

103. In its 2007 Annual Report, the Volkswagen AG, highlighted Audi's "pioneering role" on the United States market for its accomplishments with the TDI diesel engine. The report stated that "the Audi Q7 was equipped with the cleanest diesel engine in the world in time for its U.S. market launch in 2009," and that, "Audi profiles itself as a long- established premium brand with the magic words 'ultra low emission system' – a system that already complies with the extremely strict US LEV II BIN 5 emission standards and has been approved in all states of the US." The report hailed, "Audi Q7 3.0 L TDI – conquering America with ultra-modern diesel technology," and, "Now, with the Q7's high-

performance diesel powertrain, Audi is not only complying with the strict US emissions regulations, but is carving out a new image at the same time.”

104. Audi, like Volkswagen, pitched its diesel engines as environmentally friendly, powerful, and efficient. Drawing heavily from the themes in Volkswagen’s advertisements, Audi deceptively portrayed its Affected Vehicles as clean and safe for the environment, unlike the diesels of yesteryear.

105. Audi proclaimed that “[d]iesel [was] no longer a dirty word,” but failed to disclose that its vehicles were so dirty that they could not pass emission standards in the U.S. and that the only reason why they were introduced into the stream of commerce here is because Audi fraudulently obtained COCs from the EPA for these vehicles.

106. Audi advertised that by driving an Audi TDI, you could “[p]rotect the environment and look good doing it,” while failing to disclose unlawful amounts of NOx were emitted into the environment.

107. Audi also ran numerous TV commercials for its “clean” diesel vehicles, many of which touted the “eco-friendly” characteristics of its diesel technology. One ad, “The Green Police” portrayed a world in which the environmental police (“Green Police”) arrested people for using plastic cups, failing to compost, asking for plastic bags at the grocery store, throwing out batteries, and drinking water from plastic bottles. And at a highway checkpoint, the “ECO ROADBLOCK,” the Green Police flagged cars that were harmful to the environment: but not Audi vehicles.

108. In Audi’s advertisement, when the Green Police at the ECO ROADBLOCK see an Audi A3 TDI SportWagen, they give the car a “thumbs up” and allow the driver to bypass the roadblock.

109. In the same Audi Green Police advertisement, after the white A3 TDI cruises past the other vehicles, the screen fades to black and falsely touts the supposed “green credentials” of the Audi A3 TDI diesel.

110. Like Volkswagen, Audi also made representations of “clean diesel” in print brochures available at dealerships and on Audi’s website. For example, an Audi 2011 A3 TDI brochure states:

With the potent combination of direct diesel injection and turbocharging, the 2.0-liter TDI® clean diesel engine delivers an impressive 236 lb-ft. of torque and produces 140hp. The power and performance is complemented with impressive EPA-estimated 30 MPG city and 42 MPG highway ratings. Producing 30 percent fewer CO2 emissions than a comparable gasoline engine, the 2.0 TDI clean diesel also meets or exceeds the 50 state emissions requirements.

...

Long gone are the days of dirty, smoking diesel engines. Audi TDI clean diesel technology is responsible for the cleanest diesel engines in the world, with 30 percent fewer CO2 emissions than comparable gasoline engines, making it an environmentally friendly alternative to gasoline power. In fact, TDI clean diesel is compliant with California’s ULEV II requirement—the world’s most stringent emission standard. The result is a significant reduction in emissions that contribute to global warming.

111. Audi’s 2016 A6 and A7 brochures similarly stated that the TDI versions of these cars meet emission rating “ULEV II,” and the 2016 A6, A7, and Q5 brochures all similarly stated:

Taking advantage of the greater power density of diesel fuel over traditional gasoline, the available 240-hp 3.0-liter TDI® clean diesel V6 delivers incredible torque (428 lb-ft) and passing power, while boasting impressive fuel efficiency numbers. It also produces fewer emissions with a combination of Piezo direct injection, a high compression ratio, and innovative after-exhaust treatment that helps eliminate up to 95% of diesel NOx emissions.

112. An Audi 2016 A8 brochure also listed the TDI models as meeting emission rating “ULEV II,” and further stated:

With 240 hp and 428 lb-ft of torque on tap, the available 3.0-liter TDI® clean diesel engine’s elasticity in the passing lane is almost as impressive as its ability to take on even the longest road trips. And with features like AdBlue® exhaust after-treatment helping to make every journey a little cleaner, this is a performance win for all sides.

113. On November 22, 2015, after almost three weeks of denying the EPA’s allegations contained in the November NOV, Audi finally admitted that defeat device software was installed in all of the 3.0 liter Affected Vehicles. Specifically, Audi stated that it had failed to disclose three auxiliary emissions control devices for its 3.0-liter diesel engines to U.S. regulators, and further admitted: “One of them is regarded as a defeat device according to applicable U.S. law. Specifically, this is the software for the temperature conditioning of the exhaust-gas cleaning system.” This admission came almost three months after Volkswagen’s initial, more limited confession.

114. Porsche similarly exploited the “clean” diesel branding for its Cayenne SUV to deceptively convey that the vehicle was environmentally friendly and legal to drive. The “clean” diesel marketing and advertising for the Cayenne SUV also omitted the material fact that the COC issued by the EPA for the vehicle was based on a fundamental misrepresentation. Those ads were unfair, deceptive, false, and misleading.

115. Porsche represented, promoted, advertised and marketed its Cayenne SUV as having “clean diesel” engine in print, and on the Internet, including social media.

116. Porsche expressly marketed the fuel-efficiency of the Cayenne diesel, even though such efficiency could not be achieved while complying with applicable emission regulations.

117. The brochure for Porsche's diesel-powered 2013 Cayenne SUV, available online and at dealerships, touted the vehicle's "Intelligent Performance and efficiency — the core characteristics of Porsche engineering." It boasted that "[t]his is no ordinary diesel. This is a Porsche 3.0-liter V6 turbo diesel engine. It's a technological marvel, able to take its unique fuel source and transform it into clean, efficient, and incredibly torque-rich power." Further, the brochure exclaimed Porsche "refined" diesel engine technology, which made its diesel engine "far advanced from what many people perceive—especially in terms of its acceleration, clean emissions, and quiet running operation." The brochure even touted its "low emissions" on a page entitled: "A cleaner diesel. Exhaust technologies." Porsche described the exhaust system and stated that its exhaust technologies "help to ensure the reduction of harmful pollutants into the environment and make the Cayenne diesel compliant with U.S. emission standards." These statements were all unfair, deceptive and misleading.

118. One day after the November NOV was issued, Volkswagen denied that it had installed defeat devices on its 3.0-liter V6 diesel power units to alter emissions characteristics in a "forbidden manner." However, the day after issuing its statement, Porsche stopped selling 2014-2016 model-year Cayenne SUVs with diesel engines.

119. A few weeks later, on November 22, 2015, Volkswagen issued a statement in which it admitted that it failed to disclose that its United States 3.0-liter TDI® V6 Audi models A6, A7, A8, Q5 and Q7, model years 2009-onward, contained three (3) auxiliary emissions control devices ("AECDs") to regulators in the United States. The statement explained that one of the AECDs related to the temperature conditioning of the exhaust-gas cleaning system, and continued by stating: "One of them is regarded as a defeat device according to US law. Specifically, this is the software for the temperature conditioning of the

exhaust-gas cleaning system.” The statement also admitted that Volkswagen used the engine in the Volkswagen Touareg, and that Porsche had used it in the Cayenne since model year 2013.

120. At a December 10, 2015 press conference, Volkswagen discussed the preliminary results of an internal investigation, and released a presentation and statement regarding its preliminary findings. In the statement, Volkswagen explained that the emissions scandal was not a one-time error, but a chain of errors that were allowed to happen, beginning with the strategic decision to launch a large-scale promotion of diesel vehicles in the United States within the required timeframe and budget. The statement provided that this decision led to the incorporation of software that adjusted nitrogen oxide emission levels according to whether they were on the road or in testing, and when an effective technical process was later available to reduce NOx emissions, it was not used to the full extent possible. Instead, the software allowed the exhaust gas treatment additive “AdBlue” to be injected in variable amounts such that NOx values were particularly low when automobiles were in testing, but significantly higher when they were on the road.

121. Volkswagen’s former CEO, Martin Winterkorn, publicly admitted Volkswagen installed the defeat devices in its diesel vehicles in order to bypass or render inoperative any emission control device. Winterkorn resigned shortly after disclosing this conduct by Volkswagen.

122. Volkswagen’s defeat device was intended to fool the EPA and state regulators so its TDI diesel vehicles could pass emissions testing, but then pollute the air under normal operation as Michael Horn, then CEO of Volkswagen America, confessed in the fall of 2015 at Congressional hearings: “[the defeat device] was installed for this purpose, yes.”

123. The public disclosure of the emissions scandal has resulted in the suspension, firing, and resignation of several executives and engineers of the Defendants, including Martin Winterkorn and Michael Horn.

124. West Virginia consumers responded to Volkswagen's advertising by purchasing TDI clean diesel models, expecting that their vehicles would be environmentally friendly, fuel efficient, and high performance, as advertised.

125. The TDI clean diesel vehicles were sold at a premium above the cost of standard gasoline engines. Depending on the make and options chosen by consumers, the premium was between \$1,000 and \$6,855.

126. However, those West Virginia consumers who purchased Volkswagen TDI clean diesel vehicles did not receive vehicles that would perform as represented to them by Volkswagen. Specifically, the TDI clean diesel vehicles are not environmentally friendly, and gain performance, fuel efficiency, and EPA certification only by circumventing required environmental controls.

127. The EPA has ordered Volkswagen to recall the Affected Vehicles and repair them so that they comply with EPA emissions requirements at all times during normal operation.

128. Under the terms of the partial federal settlement with the EPA, Volkswagen must remove 85% of the 2.0 Liter Affected Vehicles from U.S. roads and either destroy the vehicles or fix them so that they comply with the CAA by June 30, 2019.

129. Volkswagen will not be able to comply with the EPA order or settlement to make the Affected Vehicles comply with emissions standards without substantially degrading their performance and fuel efficiency to a level below that advertised by Volkswagen, and below that experienced by consumers prior to, or when they purchased their vehicles.

130. Volkswagen Defendants (except Audi America) have now admitted in the federal partial settlement that

At the present time, there are no practical engineering solutions that would, without negative impact to vehicle functions and unacceptable delay, bring the 2.0 Liter Subject Vehicles into compliance with the exhaust emission standards and the on-board diagnostics requirements to which VW certified the vehicles to EPA and CARB;

131. Should the Affected Vehicles be repaired to make them comply with EPA emissions requirements, the reduced performance and fuel efficiency, together with a stigmatization of the vehicles, will cause a diminution in the value of every Affected Vehicle.

132. According to the West Virginia Division of Motor Vehicles (“DMV”), as of July 2016, there were about 2,772 diesel Volkswagen, Audi and Porsche branded vehicles from model years 2009 to 2016 registered in this state.

133. At all times pertinent to the case at bar, Volkswagen engaged in the advertising, sale and financing of motor vehicles to West Virginia Consumers. Therefore, Volkswagen’s business practices are subject to the provisions set forth in the WVCCPA, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101.

134. The WVCCPA prohibits, *inter alia*, a merchant of goods from engaging in unfair methods of competition and unfair or deceptive acts or practices in trade or commerce including its advertising to and transactions with a consumer. W. Va. Code § 46A-6-104.

135. Volkswagen and the Bosch companies engaged in unfair methods of competition and unfair or deceptive acts or practices in violation of the WVCCPA, generally, and W. Va. Code § 46A-6-104, specifically.

FIRST CAUSE OF ACTION
(Certifications, Benefits and Characteristics Not as Promised
W. Va. Code § 46A-6-102(7) (B), (C), (E) and (G))

136. The State reasserts each and every allegation in Paragraphs 1 through 135 of the Amended Complaint as if set forth fully herein.

137. Vehicles sold in the United States are required to have a certificate of conformity from the EPA.

138. Vehicles equipped with defeat devices will not be issued a certificate of conformity by the EPA, and cannot, therefore, be sold in the United States.

139. Nonetheless, Volkswagen and Bosch equipped the affected TDI clean diesel vehicles with defeat devices in order to cheat the environmental standards required by the EPA and trick the EPA into issuing the required EPA certification.

140. By equipping its vehicles with defeat devices Volkswagen, with Bosch's assistance, was able to artificially inflate the fuel efficiency, performance, and emissions data above a level possible if the vehicles were operating with the appropriate environmental controls.

141. Volkswagen then marketed the TDI clean diesel line of vehicles as EPA certified in all 50 states.

142. Further, Volkswagen marketed the TDI clean diesel line of vehicles as environmentally friendly, fuel efficient, and high performance when in fact, Volkswagen intentionally and deliberately placed defeat devices on the vehicles to allow the vehicles to pass emissions tests while producing illegal levels of pollutants during normal operation.

143. Volkswagen's claimed fuel efficiency and performance for the TDI clean diesel line of vehicles was misleading because it was only obtainable on vehicles operating with environmental controls intentionally and illegally turned off.

144. Bosch worked with, assisted and conspired with Volkswagen to mislead and mispresent Volkswagen's diesel TDI vehicles were legal to operate on U.S. roads and were environmentally friendly, eco-conscious, and clean.

145. Volkswagen and Bosch engaged in unfair or deceptive acts or practices in violation of the WVCCPA by representing that the TDI clean diesel line of vehicles were environmentally friendly, fuel efficient and high performance, when in fact, the vehicles did not have those characteristics, benefits or qualities. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(B), (C), (E) and (G).

SECOND CAUSE OF ACTION
(Advertised Services Not Delivered, W. Va. Code § 46A-6-104)

146. The State reasserts each and every allegation in Paragraphs 1 through 145 of the Amended Complaint as if set forth fully herein.

147. Volkswagen advertised that it manufactures and sells environmentally friendly, clean, turbocharged diesel-powered motor vehicles to consumers in West Virginia.

148. Volkswagen advertised that its TDI clean diesel line of vehicles delivered 30 percent better fuel mileage, "significantly more torque" and were "more fun" to drive.

149. Volkswagen also advertised that its "clean" diesel engine had "cleaned up its act" and urged consumers to "find out how clean diesel technology impacts fuel efficiency and performance, while also being a more eco-conscious choice."

150. Volkswagen's advertisements misrepresented to consumers that the Affected Vehicles would be "eco-conscious," and "clean" while delivering the fuel mileage and performance advertised. This advertising is unfair or deceptive as defined by the WVCCPA because the Affected Vehicles are not clean or eco-conscious since they violate federal

pollution laws. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(I) and (N).

151. Volkswagen's advertising is unfair and deceptive, since it misrepresents the true fuel mileage and performance of the Affected Vehicles once the defeat devices are removed or disabled. Volkswagen failed to disclose the true fuel mileage and other performance characteristics of its TDI diesel line of vehicles. Volkswagen never intended to sell the Affected Vehicles as advertised in violation of the WVCCPA. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(I) and (N).

THIRD CAUSE OF ACTION
(Volkswagen Cause Confusion and Misunderstanding
Through its Misrepresentations and Omissions,
W. Va. Code § 46A-6-102(7) (L) and (M))

152. The State reasserts each and every allegation in Paragraphs 1 through 151 of the Amended Complaint as if set forth fully herein.

153. Consumers were confused and misled by Volkswagen's advertising.

154. When consumers saw advertising for Volkswagen's TDI diesel line of vehicles, they properly expected to purchase Affected Vehicles that were environmentally friendly and eco-conscious while delivering the performance and fuel economy advertised.

155. Consumers never expected to purchase an Affected Vehicle that was environmentally unfriendly, and that polluted the atmosphere in violation of federal laws. Volkswagen's unfair and deceptive conduct caused confusion and misunderstanding in violation of the WVCCPA. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(L).

156. Volkswagen failed to disclose that its TDI diesel line of vehicles were not in compliance with and violated federal laws until it was caught by regulators. Volkswagen

intended for consumers to rely on its omissions so that it could sell its unlawfully polluting TDI diesel line of vehicles in violation of the WVCCPA. W. Va. Code § 46A-6-104 as defined by W. Va. Code § 46A-6-102(7)(M).

FOURTH CAUSE OF ACTION
(Excess Fees Violations, W. Va. Code § 46A-7-111)

157. The State reasserts each and every allegation in Paragraphs 1 through 156 of the Amended Complaint as if set forth fully herein.

158. Volkswagen charged and collected excess money from West Virginia consumers for Affected Vehicles that cannot meet the advertised specifications without violating federal law.

159. Volkswagen engaged in unfair or deceptive acts or practices by charging and collecting more money than justified for its TDI diesel line of vehicles due to its deceptive and misleading advertising in violation of W. Va. Code § 46A-7-111 and W. Va. Code § 46A-6-104. As such, Volkswagen is subject to civil penalties up to ten times the excess charge as permitted by W. Va. Code § 46A-7-111(1).

FIFTH CAUSE OF ACTION
(Public Nuisance)

160. The State reasserts each and every allegation in Paragraphs 1 through 159 of the Amended Complaint as if set forth fully herein.

161. The Defendants have created and continue to perpetuate and maintain a public nuisance through the sale and operation of Affected Vehicles on West Virginia's roads.

162. The Affected Vehicles emit up to 40 times the allowable NOx pollution levels, causing harm to the health, welfare and safety of West Virginia citizens, and to the air and water of the State, and causing inconvenience to West Virginia citizens.

163. The Defendants knew of should have known that their wrongful conduct would harm and inconvenience West Virginia citizens and the air and water of the United States including West Virginia.

164. The public nuisance the Defendants created and continue to perpetuate and maintain can be abated, and further occurrence of such harm can be prevented.

165. The health and safety of West Virginia citizens, including, but not limited to those citizens who have come in contact with the pollution emitted by the Affected Vehicles, is of great public interest and of legitimate concern to the State and its citizens and residents.

166. The Defendants' wrongful conduct was designed to evade environmental laws so that the Affected Vehicles could, did and still pollute and degrade the environment of the United States, including West Virginia, constituting a public nuisance for which the State seeks all equitable relief, and an order requiring the Defendants to abate the public nuisance.

PRAYER FOR RELIEF

WHEREFORE, The State of West Virginia requests that this Court:

1. Enter an Order permanently enjoining and restraining Volkswagen Defendants and Bosch Defendants from engaging in unfair or deceptive acts or practices in violation of W. Va. Code §§ 46A-6-101 and 104 in general and, specifically, from engaging in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-102(7), (B), (C), (E), (G), (I), (L) and (M);

2. Enter an Order permanently enjoining and restraining Volkswagen Defendants from continuing to use unfair or deceptive terms in its advertising of TDI diesel line of vehicles in violation of the WVCCPA. W. Va. Code § 46A-6-104;

3. Enter an Order compelling Volkswagen Defendants to prominently disclose in its advertising the true performance specifications of its TDI diesel line of vehicles when the Affected Vehicles are in compliance with federal laws;

4. Enter judgment against Volkswagen Defendants and Bosch Defendants and in favor of the State, ordering it to pay appropriate restitution to West Virginia consumers for all money paid to Volkswagen, and indirectly to Bosch, for Affected Vehicles, including, but not limited to, full refunds of the premium West Virginia consumers paid for their TDI clean diesel vehicles above comparable gasoline engine models, for the diminution in value of the Affected Vehicles suffered by West Virginia consumers, and for increased fuel and maintenance costs reasonably expected to be incurred by West Virginia consumers as a result of the decrease in performance following any repair of these issues by Volkswagen;

5. Enter judgment against Volkswagen Defendants and order them to refund all excess charges that it collected from West Virginia consumers and for civil penalties in an amount of ten times the excess charges collected from West Virginia consumers pursuant to W. Va. Code § 46A-7-111;

6. Enter judgment against and order Volkswagen Defendants to pay or perform all equitable relief to remedy the harms suffered by the State as a result of the public nuisance caused by Volkswagen's unlawful conduct;

7. Enter an order compelling Volkswagen Defendants to abate the public nuisance it caused and to remediate West Virginia's environment to the extent feasible;

8. Enter judgment against and order Volkswagen Defendants and Bosch Defendants to pay to the State of West Virginia all its attorneys' fees, court costs,

investigation costs, and all other costs associated with the investigation and maintenance and prosecution of this action;

9. Enter judgment against and order Volkswagen Defendants and Bosch Defendants, to each pay a civil penalty to the State of West Virginia in the amount of Five Thousand Dollars (\$5,000.00) for each and every willful and repeated violation of chapter 46A of the West Virginia Code that they committed, as provided in W. Va. Code § 46A-7-111(2);

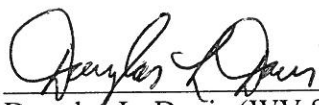
10. Enter an Order granting the State and its citizens all equitable relief available, including, but not limited to, restitution and disgorgement; and

11. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
Attorney General

By Counsel



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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY, ATTORNEY GENERAL,

Plaintiff,

v.

Civil Action No. 15-C-1833
Judge Charles E. King

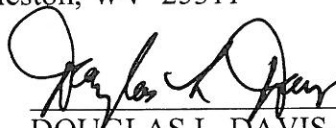
VOLKSWAGEN GROUP OF AMERICA, INC.,
d/b/a or a/k/a Volkswagen of America, Inc.,
a New Jersey Corporation,
VOLKSWAGEN AKTIENGESELLSCHAFT,
d/b/a or a/k/a VOLKSWAGEN AG and/or
d/b/a or a/k/a VOLKSWAGEN GROUP, a German corporation,
AUDI OF AMERICA, LLC, a Delaware limited liability company,
AUDI AKTIENGESELLSCHAFT,
d/b/a or a/k/a AUDI AG,
a German corporation,
PORSCHE CARS NORTH AMERICA, INC.,
a Delaware corporation,
DR. ING. H.C.F. PORSCHE AG
d/b/a PORSCHE AG, a German corporation,
ROBERT BOSCH GMBH, a German company, and
ROBERT BOSCH, LLC, a Delaware limited liability company,

Defendants.

CERTIFICATE OF SERVICE

I, DOUGLAS L. DAVIS, counsel for Plaintiff, do hereby certify that a true and accurate copy of the foregoing **Amended Complaint** was served upon Volkswagen Group of America, Inc.'s counsel via U.S. First Class Mail this 3rd day of August, 2016 as follows:

Shawn P. George
George & Lorensen, PLLC
1526 Kanawha Blvd, East
Charleston, WV 25311



DOUGLAS L. DAVIS (WV Bar #5502)
ASSISTANT ATTORNEY GENERAL